IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A.No. 271 of 2001(O&M)

DATE OF DECISION: APRIL 16, 2007

Inder Singh Kataria

...APPELLANT

VERSUS

Kedar Nath and another

...RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr.C.B.Goel, Advocate,
for the appellant.

...

This is plaintiff's Regular Second Appeal against the judgment of reversal. The trial court decreed the suit of the plaintiff declaring him as owner in possession of the plot in dispute on the basis of adverse possession. The first Appellate Court on appeal by the defendants, partly reversed the judgment and decree passed by the trial court to the effect that though the plaintiff was found in possession of the disputed property, but his possession has not been ripened in ownership on the basis of adverse possession. Therefore, his suit for declaring him as owner of the plot in dispute on the basis of adverse possession was dismissed. However, on the basis of his possession, the defendants were restrained from interfering in the peaceful possession of the plaintiff on the plot in dispute.

The first Appellate Court has partly reversed the judgment of the trial court on the ground that it has not been disclosed who is the owner of the disputed plot. In his suit, the plaintiff does not claim the ownership of the disputed property in his own right. He only claimed ownership by

way of adverse possession. But before the Courts below, he did not plead and prove who is owner of the disputed plot.

I have heard the counsel for the appellant. He could not controvert the aforesaid factual position. Undisputedly in the suit, the plaintiff has not disclosed the name of the true owner of the disputed plot. It is well settled that if a person is claiming adverse possession over a property, then he is required to plead and prove as to who is the true owner of the property whose title was being denied by him. Mere possession, however long it may be, does not necessarily mean that it is adverse to the true owner. If the plaintiff does not know who is the true owner of the disputed property, the question of his being in hostile possession and the question of denying title of the true owner, do not arise. This legal position has been reiterated by the Supreme Court in a recent decision in T.Anjanappa and Ors. v. Somalingappa and Anr. 2006(2) RCR (Rent) 593.

In view of the aforesaid factual and legal position, no substantial question of law is involved in the instant appeal.

Dismissed.

April 16, 2007 (SATISH KUMAR MITTAL)
vkg JUDGE